

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI - EASTERN DIVISION**

CATHY J. WOODBURY,)	
)	
Plaintiff,)	
)	Cause No.: 4:11-cv-1049 (CEJ)
v.)	
)	
MARRIOTT INTERNATIONAL, INC.,)	
COURTYARD BY MARRIOTT II, L.P.,)	
COURTYARD MANAGEMENT)	
CORPORATION, and FISERV, INC.,)	
)	
Defendants.)	

DEFENDANTS' TRIAL BRIEF

COME NOW DEFENDANTS, Marriott International, Inc., Courtyard by Marriott II, L.P., and Courtyard Management Corporation, through undersigned counsel, and submit the following Trial Brief pursuant to this matter's March 22, 2012 Case Management Order.

INTRODUCTION

While staying at the Courtyard St. Louis Westport Plaza hotel, plaintiff Cathy Woodbury ("Woodbury") alleges she was locked outside on the balcony of her second-floor hotel room when the "Charlie bar" security mechanism for the sliding glass door fell into a horizontal position, preventing the door from opening from the outside.

FACTUAL ISSUES

While there is not much disagreement about the events leading up to the accident generally, defendants dispute liability and contend plaintiff is responsible for the injuries

complained of. Defendants anticipate the jury will assess the substance and credibility of the parties' evidence and determine the outcome of these factual issues, including the degree of comparative fault to be assessed to plaintiff.

LEGAL ISSUES

In addition to evidentiary arguments to be made in connection with motions in limine, defendants contend there is insufficient evidence on the record warranting a punitive damages submission to the jury.

“To make a submissible case for punitive damages, the evidence and the inferences drawn therefrom must allow a reasonable juror to conclude that the plaintiff established with *convincing clarity* that the defendant's conduct was outrageous because of evil motive or reckless indifference.” *Gibbs v. Blockbuster, Inc.*, 318 S.W.3d 157, 171-72 (Mo. App. E.D. 2010) (emphasis added). “Punitive damages are extraordinary and harsh, and so the evil motive or reckless indifference *must be proven by clear and convincing evidence.*” *Id.* (quoting *Blue v. Harrah's North Kansas City, LLC*, 170 S.W.3d 466, 477 (Mo. App. W.D. 2005) (emphasis added).

Defendants anticipate plaintiff will attempt to admit evidence of a prior Charlie bar lock-out incident at the Courtyard hotel in Highland Park, Illinois as well as a prior incident at a Courtyard hotel in Andover, Massachusetts in an attempt to show knowledge on the part of the Marriott defendants of the Charlie bar's dangerous condition. But even if such evidence is admitted, these two incidents are insufficient to establish, by clear and convincing evidence, that defendants acted outrageously or out of evil motive or reckless indifference. This is especially true when it is considered how many tens of thousands of

guests have stayed at Courtyard hotels across the country since the introduction of Charlie bars to Courtyard hotels in 1987.

Accordingly, plaintiff should not be permitted to submit a punitive damages claim to the jury.

CONCLUSION

Defendants anticipate a straightforward trial of the issues in which the jury will ultimately determine the parties' respective degree of fault for plaintiff's injuries.

/s/ Joseph R. Swift
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II, L.P., and Courtyard Management
Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2013 the foregoing was filed electronically with the clerk of the court to be served by operation of the court's electronic filing system to: George Miller, The Miller/Salsbury Law Firm, 925 West Fifth St., (I-44 North Outer Rd), Eureka, MO 63025 and James Kriva, Kasdorf, Lewis & Swietlik, S.C., One Park Plaza, 11270 West Park Place, Milwaukee, WI 53224.

/s/ Joseph R. Swift

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